

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KRYSTAL OWENS, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JOHN TERRY OWENS,

Respondent-Appellant.

UNPUBLISHED

September 14, 2004

No. 252654

Wayne Circuit Court

Family Division

LC No. 03-419934

Before: Donofrio, P.J., and White and Talbot, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order taking jurisdiction of the minor child under MCL 712A.2(b). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E)(1)(b).

Petitioner sought jurisdiction over the minor child based upon allegations that the mother of the minor was deceased and respondent was incarcerated for violating parole by threatening the minor with a knife. In a bench trial, the court received testimony that the mother of the minor child died in May 2002 and respondent was incarcerated in November 2002. The minor child testified that respondent pulled a knife on her and her eighteen-year-old sister in November 2002, that she and her sister testified at a parole hearing, and that as a result respondent was incarcerated.

Respondent contends on appeal that he was denied the right to a jury trial. A respondent has a right to trial by judge or jury in the adjudicative phase of child protective proceedings. MCR 3.911(A). Respondent correctly notes on appeal that the trial court did not advise him of the right to a jury trial on the record and incorrectly stated that it had done so. Since such notice is clearly required by court rule, MCR 3.965(B)(6), we conclude that the trial court erred by failing to give the appropriate notice on the record.¹

¹ Respondent also points out that his presence via speakerphone was not secured at the preliminary hearing as required by court rule. MCR 2.004. However, respondent's trial
(continued...)

Nevertheless, the right to a jury trial is waived by a party's failure to make a timely demand for jury trial. *In re Hubel*, 148 Mich App 696, 699; 384 NW2d 849 (1986). Respondent in this matter clearly failed to timely demand a jury trial, MCR 3.911(B), making his first request on the day of trial. MCR 3.911(B) also provides, however, that the court may excuse a late jury demand in the interest of justice. The court's decision whether to grant an untimely request for a jury trial is reviewed for an abuse of discretion. *In re Hubel, supra* at 697. Under the particular circumstances of this case, where respondent was present at the pretrial via telephone and agreed that the child's mother was dead and that he was imprisoned, and did not voice any dissatisfaction when the matter was set for a bench trial, and where there is no conceivable basis to challenge the underlying facts of the mother being dead and defendant being imprisoned, and the circumstances of his parole violation are irrelevant to the court's assumption of jurisdiction over the child, we conclude that the court's denial of the late jury trial request did not constitute an abuse of discretion.

Respondent next contends that the trial court abused its discretion by denying respondent's request for a continuance to resubpoena witnesses who failed to appear at trial. The trial court did not abuse its discretion by denying a continuance. *In re Jackson*, 199 Mich App 22, 28; 501 NW2d 182 (1993). An adjournment of trial in child protective proceedings should only be granted for good cause. MCR 3.923(G)(1). In the instant case, two of the three absent witnesses had been properly served with subpoenas, yet respondent declined to take steps to enforce those subpoenas. The court offered the immediate option of pursuing contempt proceedings or having the witnesses arrested and brought to court. Where respondent opted not to enforce valid subpoenas, there was no reason for the court to adjourn the matter and it did not abuse its discretion by refusing to do so.

Finally, respondent contends that the trial court improperly admitted his criminal lien history at the adjudication trial. The document is indeed hearsay, but its admission was proper under MRE 803(6), which provides an exception to the general ban on hearsay evidence for records of regularly conducted activity. See *People v Jobson*, 205 Mich App 708, 713; 518 NW2d 526 (1994) [police activity logs held admissible under MRE 803(6)]. Further, the document was a certified copy of a public record, which therefore did not require extrinsic evidence of authenticity as a condition precedent to admissibility. MRE 902(4). Respondent's contention that the records were more prejudicial than probative, MRE 403, also lacks merit. Respondent does not contend that the records are not relevant, and has not asserted that the records are inaccurate. The trial court did not abuse its discretion in admitting the records. *People v Layher*, 464 Mich 756, 761; 631 NW2d 281 (2001).

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attorney's waiver of his presence deprives this claim of any force it might have had, particularly where respondent did participate by speakerphone in the pretrial hearing where he was again represented by counsel.

Affirmed.

/s/ Pat M. Donofrio
/s/ Helene N. White
/s/ Michael J. Talbot